

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/919,747
Inventor: Joseph C. Murray
Filing Date: 08/01/2001
Title: Insulating Packaging Material and
Related Packaging System

SUPPLEMENTAL DECLARATION OF JOSEPH C. MURRAY

1. I am the inventor for U.S. Patent Application No. 09/919,747 ("the '747 application"). I have reviewed the Patent Office's response to our petition to revive the '747 application. I am submitting this supplemental declaration to provide additional facts as requested by the Patent Office, as best as I know them, in support of the renewed Petition to Revive for this application.
2. As I have said previously, neither my original company, nor my current company, nor I **ever had any intention of letting this application go abandoned at anytime for any reason**, nor could we have done anything else in our power to ensure that a response was filed to the last Office Action (or any, for that matter) in a timely manner.
3. The Patent Office wants an explanation of the facts of what happened before the '747 application went abandoned in May 2005, and then again between June 2006 and July 2007. A more detailed discussion of our activities and intentions during both of these time periods follows.

Period Leading up to May 2005 and Thereafter

4. During 2002-2005, as mentioned in my earlier Declaration, I was extremely ill, yet I still kept in contact with Mr. Pugh periodically. What contact I did have essentially consisted of the instructions to "maintain the patents", which included the '747 application. During that period, I sent and received a number of e-mails to and from Mr. Pugh to this effect. Unfortunately, I no longer have them, because a nearby lightning strike during Hurricane Katrina in 2005 caused a power surge that destroyed the computer I was using at the time. Even so, Mr. Pugh had assured me that he would maintain the patents as instructed and that he would work on the '747 application when the time came. The time apparently came and went, and I was never informed by Mr. Pugh. I thought that by expressly instructing my patent attorney not to abandon the '747 application that it would be properly maintained, and that if the Patent Office asked for additional documentation or information regarding the '747 application, I would be informed. I thought that was the express role of a patent attorney.

5. At no point from 2002-2005 did Mr. Pugh mention to me --or, to my knowledge, anyone else at or connected to my company-- that he had received an Office Action or any other such communication from the Patent Office. It was only on September 28, 2007 that I became aware there ever was a 2005 Office Action, from Mr. Negrin, one of my current patent attorneys at Pryor Cashman. Mr. Negrin was the first person to tell me or anyone else at ThermoFreeze that the '747 application was abandoned, and that Mr. Pugh has actually let the application go abandoned three different times. As I have said

earlier, I was completely unaware of any of the three abandonments of the '747 application until September 28, 2007.

6. Around the time of the '747 application's abandonment in May of 2005, I underwent my second major surgery in which a baseball-sized tumor and 20% of my liver were removed. During the rest of 2005 and the first portion of 2006, I underwent very extensive chemotherapy. At some point during that period, I did inquire of Mr. Pugh as to the overall status of the portfolio, the specific payment of the maintenance fees, and the status of the pending (or so I thought) '747 application. He reassured me that everything was being taken care of and in order. I had no way of knowing that that statement was inaccurate. He never mentioned that the Patent Office had examined the '747 application. All of the correspondence from the Patent Office went to Mr. Pugh, none of it went to me or anyone else at the company. No one but Mr. Pugh knew what was going on with the '747 application, and he never shared it with us. To this day, I have no idea why he let it go abandoned despite my instructions and intentions to the contrary.

7. Unfortunately, no one can speak to Mr. Pugh now regarding why he let the application go abandoned three times, most recently in May of 2005. He is completely debilitated after two massive strokes and can answer no questions.

8. When Bob McGuire visited Mr. Pugh's office in Connecticut in November 2007, Mr. McGuire had indicated to me that Mr. Pugh's wife was going to call me. I had hoped

that when she called, I would have an opportunity to try to obtain our files from her. She never called me, and now that the Pughs have reportedly moved away from their Connecticut home that also served as Mr. Pugh's office, I have no way to reach her or him. Consequently, there is no way of telling why he let my patent application go abandoned three times or why he never acted at all in response to the 2005 Office Action.

June 2006-July 2007

9. As I indicated in my previous Declaration, I was diagnosed as cancer-free on June 6, 2006. I began to re-assume the duties and responsibilities of attempting to commercialize my inventions almost at once. As part of revitalizing our company, I had the responsibility to refurbish an 18,000 square foot building, including getting a new roof on it. I also had to oversee --and sometimes personally physically accomplish-- the moving of production equipment, office furniture and equipment, etc. into the new facility at the lowest cost and maximum efficiency possible. During the period of June 2006 through July 2007, I was often working 18 hours a day, seven days a week to get the business up and running. At this point, I was still unaware that the Office had ever examined the '747 application, let alone that a response to it was never submitted. (Id.)

10. In my previous Declaration, I described how in June 2006 I telephoned Mr. Pugh to determine the status of the patent portfolio, whereupon he suffered a major debilitating stroke while we were speaking on the telephone.

11. After that telephone call, over the course of the next several months, I made numerous attempts to try to reach Mr. Pugh. On one occasion, I spoke with his wife, who indicated he was not well, that he actually had suffered a second major stroke on the other side of his brain. On at least one subsequent occasion, I was able to reach Mr. Pugh directly. In none of our post-stroke telephone conversations was Mr. Pugh coherent nor did Mr. Pugh make any sense. It was impossible to speak to Mr. Pugh about anything pertaining to patents.

12. For several months after July 2006, we did not know if Pugh would recover sufficiently to return to work, and he had all the files and records. It was not germane to pressure Pugh for some time after his strokes, as he was in the hospital and recovery, and since we had no idea the '747 application had been abandoned (or even that an Office Action had been sent by the Patent Office in the first place).

13. As time went on I called their home every two to four weeks for the next year, i.e., until June 2007. Those calls were placed at all times of the day and evening. I left a number of messages, but my calls were never returned.

14. During that period, I became increasingly and deeply concerned about the status of the patents and the '747 application, the last one that Mr. Pugh worked on for us. I felt that there had to be records in Mr. Pugh's office that should be harvested for us but I could not reach anyone, anywhere. As time moved into 2007 I became more and more concerned about the '747 application, but I was not as concerned about the existing

patents since the funds for those maintenance fees had already been sent to Mr. Pugh by Mr. McGuire for payment to the USPTO. (As it turns out, the maintenance fees for those earlier patents were not paid either.)

15. At the end of 2006 and the beginning of 2007, it became clear to us that we needed to find new patent counsel. I first looked in nearby Mobile, AL but found no one who could help us in this regard. As we moved into 2007, I became aware that I was probably not ever going to reach Pugh again; in fact, at the time, I literally did not know if he was alive or dead, and I could not find out, since I could not get anyone on the phone at his home/office. In late winter/early spring 2007, I began to search for a patent attorney in Birmingham or Atlanta, although the fees for firms in these areas were huge compared to Pugh's. We had spent a tremendous amount of money on the patent portfolio, and we wanted to ensure that our next patent attorneys would be the right fit for us.

16. During this period and towards the end of the spring of 2007, we realized our company needed to reorganize and recapitalize. During the early summer of 2007, we retained Pryor Cashman for these purposes. Since Pryor Cashman also has capable patent counsel, we decided not to look further for other patent attorneys elsewhere. As soon as Messrs. Negrin and Langsam of Pryor Cashman were on the case, things moved quickly, and we were kept in the loop on all of our matters before the Patent Office, including the status of the '747 application. The details of my interaction with the patent attorneys at Pryor Cashman appear in my previous Declaration.

**Supp'l Declaration of Joseph C. Murray
In Support of Renewed Petition to Revive
U.S. Patent Appl'n No. 09/919,747**

¶17. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent(s) issued thereon.

Executed in MOBILE, AL (location)

Date: 17 OCTOBER 2008

By 
Joseph C. Murray